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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,630	05/26/2000	Robert McKinnon JR.	5925.36003	7855

21000 7590 01/03/2002

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[REDACTED] EXAMINER

ELOSHWAY, NIKI MARINA

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3727

DATE MAILED: 01/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/579,630	MCKINNON, ROBERT
	<b>Examiner</b>	<b>Art Unit</b>
	Niki M. Eloshway	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 October 2001 and 03 December 2001.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-35 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-35 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 03 December 2001 is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-6, 8-15, 17, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wischhusen et al. (U.S. 5,016,756). Wischhusen et al. teach a lid 3 made of plastic, as set forth in col. 4 lines 52-56. The upper side is element 31, the lower side is opposite the upper side. The outer edge is element 33. The recesses are elements 30. Figure 7 of Wischhusen et al. shows rectangular recesses 30 having lengths greater than one half of the “given dimension” of the member.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wischhusen et al. in view of Bonnema et al. (U.S. 4,726,490). Wischhusen et al. disclose the claimed invention except for the wedges. Bonnema et al. teach that it is known to provide a container member with wedges (see elements 45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Wischhusen et al. with the wedges of Bonnema et al., in order to securely fasten the lid to the tray and prevent any lateral shifting of the lid with respect to the tray.

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5. Claims 16, 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wischhusen et al. in view of Frank (U.S. 5,671,846). Wischhusen et al. disclose the claimed invention except for the differently sized recesses. Frank teach that it is known to provide a container member with differently sized recesses (see figures 2 and 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Wischhusen et al. with the differently sized recesses, as taught by Frank, in order to store differently sized containers and portions within the tray.

6. Claims 20 and 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wischhusen et al. in view of Conti (U.S. 4,279,354). Wischhusen et al. disclose the claimed invention except for the triangle shape of the recess. Conti teach that it is known to provide a container member with triangle shaped recesses(see figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Wischhusen et al. with a recess having a triangle shape, as taught by Conti, in order to accommodate containers having a similar configuration.

7. Claims 21, 22 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wischhusen et al. in view of Conti, as applied to claims 20 and 31 above, and further in view of Frank (U.S. 5,671,846). The modified lid of Wischhusen et al. disclose the claimed invention except for the differently sized recesses. Frank teach that it is known to provide a container member with differently sized recesses (see figures 2 and 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid of Wischhusen et al. with the differently sized recesses, as taught by Frank, in order to store differently sized containers and portions within the tray.

8. Claims 23, 24 and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wischhusen et al. in view of Conti (U.S. 4,279,354) and Frank (U.S. 5,671,846). Wischhusen et al. disclose the claimed invention except for the triangle shape of the recess and for the recesses having

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different sizes. Conti teach that it is known to provide a container member with triangle shaped recesses(see figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Wischhusen et al. with a recess having a triangle shape, as taught by Conti, in order to accommodate containers having a similar configuration.

Frank teach that it is known to provide a container member with differently sized recesses (see figures 2 and 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid of Wischhusen et al. with the differently sized recesses, as taught by Frank, in order to store differently sized containers and portions within the tray.

#### *Response to Arguments*

9. Applicant's arguments filed October 18, 2001 have been fully considered. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

#### *Response to Amendment*

10. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on December 3, 2001 have been approved by the examiner. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

#### *Conclusion*

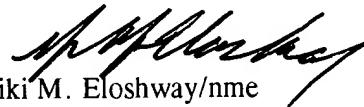
11. In view of the new grounds of rejection, **THIS ACTION IS NON-FINAL**.

12. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for

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filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Niki M. Eloshway/nme  
Patent Examiner  
December 28, 2001

# Attachment for PTO-948 (Rev. 03/01, or earlier)

6/18/01

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

## INFORMATION ON HOW TO EFFECT DRAWING CHANGES

### 1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any), if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTO-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

### 2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

#### Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.